

AGREEMENT FOR TOWING AND IMPOUND YARD SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2010, by and between WEST VALLEY CITY, a municipal corporation of the State of Utah, located at 3600 Constitution Boulevard, West Valley City, Salt Lake County, Utah, (hereinafter referred to as "CITY"), and Cal Brown Body Shop, a Utah corporation, located at 2115 West Indiana Circle, Salt Lake City, Salt Lake County, State of Utah, (hereinafter referred to as "COMPANY").

W I T N E S S E T H:

WHEREAS, CITY is desirous of obtaining wrecker towing and impound yard services for vehicles impounded pursuant to authority granted by the laws, ordinances, rules, and regulations of the State of Utah and West Valley City; and

WHEREAS, COMPANY was found to be the most responsive and responsible bidder responding to the proposal solicitation by CITY in 2010; and

NOW, THEREFORE, CITY and COMPANY, for the considerations hereinafter named, agree as follows:

A G R E E M E N T:

1. **CONTRACT DOCUMENTS.**

- A. The following are essential and indispensable parts of this Agreement and are incorporated herein by reference:
 - 1. This Agreement;
 - 2. The Request for Proposals (hereinafter the "RFP") together with the Proposal to Provide Towing and Impound Services, submitted by COMPANY (hereinafter the "Proposal");
 - 3. The Uniform Rotation Agreement and West Valley City Rotation Agreement Supplement; and
 - 4. Exhibits to Agreement:
 - (a) Exhibit A, "Evidence of Insurance."
- B. If any provision of this Agreement, the RFP, the Proposal, or the Exhibits is contradictory or inconsistent, the contradiction or inconsistency shall be resolved by giving precedence to the documents in the order listed above. However, in all other

cases, those documents constituting the Agreement, as specified herein, shall collectively govern COMPANY performance.

- C. The contract documents embody the entire Agreement between the CITY and COMPANY for the scope of services and terms and conditions of the services. No verbal agreement or conversation with any officer, agent, or employee of CITY prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way shall be binding upon CITY.
- 2. **TERM OF AGREEMENT.** This Agreement shall commence upon execution by both parties and shall terminate on July 1, 2011. CITY may extend this Agreement for three additional one year periods, renewable on an annual basis, under the same terms and conditions unless terminated as set forth in Section 10 of this Agreement.
 - 3. **SERVICES.** CITY hereby hires COMPANY as an independent contractor to tow and store motor vehicles, trailers, equipment, and other personal property incident thereto, impounded or otherwise taken by authority of CITY, pursuant to and in accordance with applicable federal, state, and municipal laws, ordinances, rules, and regulations. Under no circumstances shall COMPANY refer any towing or storage work to another wrecker or agency. However, should COMPANY be unable to perform any necessary services, provide necessary equipment or otherwise perform its duties herein, COMPANY may make necessary arrangements to contract out its work to another wrecker or agency, subject to prior approval of CITY. CITY makes no representations or guarantees as to the number of tows or impounds there will be during the term of this Agreement.
 - 4. **FEES.**
 - A. COMPANY agrees to charge the legal owner, or person entitled to have the object towed or stored by COMPANY released to him, those fees and charges as set forth in the "Proposal Rate Sheet" found in the proposal documents and incorporated herein by reference. It is understood by the parties hereto that these charges shall be the responsibility of and shall be paid by the aforementioned legal owner or person entitled to release, and not by CITY.
 - B. In the event the vehicle is not claimed by a person entitled thereto, it shall be sold at public sale. When any such vehicle or object is sold at public sale, COMPANY shall receive fees prior to any levies against the proceeds. If no bid at said sale exceeds COMPANY's towing and storage fees, COMPANY agrees to accept title to the vehicle as payment in full for the services rendered.
 - C. In the event of a public sale of any impounded vehicle or other item towed or stored pursuant to this Agreement, COMPANY, its agents, employees, or relatives, either directly or indirectly, are prohibited from participating in the bidding or purchase of

said vehicle, unless the highest bid on said vehicle exceeds the charges to COMPANY on said vehicle.

- D. COMPANY hereby waives any claim against CITY for fees due on any towing or wrecker services performed.

5. **RECORDS.**

- A. COMPANY shall keep records of all vehicles towed and impounded or otherwise in its custody, as required by CITY, and shall supply copies of the same to CITY upon demand. Said records shall include all the information outlined in the proposal documents, such as, but not limited to, make, model, vehicle identification number, time impounded, by whom impounded, reason for impounding, delivery destination, accessories on vehicle, personal property in vehicle, damage to vehicle and charges upon release.
- B. COMPANY shall comply with any other record keeping requests by CITY.
- C. COMPANY shall provide copies of all state license and certificates of operation as requested by CITY.

6. **OFFICE HOURS AND OPERATION.**

- A. In addition to the required services set forth in the proposal documents, COMPANY agrees to provide 24-hour wrecker service to any party of West Valley City within 20 minutes after notice, and within a reasonable time to any other area for the purpose of towing and impounding a vehicle at COMPANY's storage lot.
- B. COMPANY agrees to maintain an office and staff located and conducting business on the impound premises between the hours of 8:00 a.m. and 5:00 p.m., each weekday. After-hour, Saturday, Sunday, or holiday pickup appointments shall be available.
- C. COMPANY shall assist the public in a courteous manner and shall assist any peace officer or CITY employee when requested to do so.
- D. COMPANY shall not release any impounded vehicle without first receiving from the person claiming the same a release from CITY, and further agrees to comply with all terms of said release. In the event of any unauthorized release or misdelivery of any vehicle in its custody, COMPANY agrees to assume all liability for loss or damage to the vehicle so released or misdelivered.

7. **INDEMNIFICATION.**

- A. COMPANY agrees to assume all liability for damage or loss to any vehicle incurred during pickup, transportation, storage, and/or release.
- B. COMPANY agrees to take all reasonable precautions to prevent theft of vehicles or property therein, and further assumes any and all liability which may result from any theft and/or damage to any vehicle or its contents while in COMPANY's custody. It is further agreed that COMPANY will maintain adequate insurance coverage, and provide written evidence thereof to CITY, throughout the term of this Agreement.
- C. In the event of any legal action arising out of the towing, storage, or release of any vehicle or item in the possession of COMPANY, constructively or otherwise, COMPANY agrees to retain legal counsel at its own cost to defend its own interests and CITY's interests. It is expressly agreed that CITY will not indemnify nor otherwise defend COMPANY in any legal action arising out of COMPANY's activities within or without the scope of work mentioned in this Agreement
- D. COMPANY agrees to indemnify, and at the CITY's option, defend and hold harmless CITY and CITY's officials, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, claims, costs (including attorney's fees and court or other costs), and proceedings arising out of the performance or failure to perform this Agreement by COMPANY or COMPANY's officials, agents, volunteers, or employees. COMPANY further agrees to release and indemnify, and at the CITY's option, defend and hold harmless CITY and CITY's officials, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, claims, costs (including attorney's fees and court or other costs), and proceedings incurred by COMPANY, its officials, agents, volunteers, or employees, which result from the actions of any person served in the performance of this Agreement.

8. **COMPANY AS INDEPENDENT CONTRACTOR.**

- A. COMPANY shall be an independent contractor, and, as such, shall have no authorization, expressed or implied, to bind CITY to any agreements, settlements, liability, or understanding whatsoever. COMPANY agrees not to perform any acts as agent for CITY, except as expressly set forth herein. COMPANY shall not represent itself to anyone as an agent or employee of CITY, but shall only represent itself as an independent contractor.
- B. COMPANY shall be responsible for COMPANY's own actions and the actions of COMPANY's agents, officials, and employees, and any liability resulting therefrom, including agent, official, and employee compensation, benefits, insurance, and other applicable items.

- C. Persons employed by CITY and acting under the direction of CITY shall not be deemed to be employees or agents of COMPANY.

9. **APPLICABLE LAW.**

- A. COMPANY shall obey all laws, ordinances, regulations, and rules of the federal, state, county, and municipal governments that may be applicable to COMPANY's operations. Specifically, COMPANY shall comply with, but not be limited to, the Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration, and the Americans with Disabilities Act.
- B. COMPANY shall obey every lawful order of an officer of the West Valley City Police Department.
- C. Any violation of federal, state, or local law shall constitute a breach of this Agreement, and COMPANY shall hold CITY harmless from any and all liability arising out of or in connection with said violations, including any attorney's fees and costs incurred by CITY as a result of such violations.
- D. This Agreement shall be construed under and in accordance with the laws of the State of Utah and the laws of the United States of America.

10. **TERMINATION OF AGREEMENT.**

- A. CITY may terminate this Agreement without cause by giving COMPANY 30 day prior written notice.
- B. CITY may terminate this Agreement immediately for cause by giving written notice to COMPANY stating COMPANY's breach of this Agreement. "Cause" is defined as a bad faith performance, unreasonable performance, lack of performance, or a violation or breach of the terms and conditions of this Agreement or applicable federal, state, and municipal laws, rules, and regulations.
- C. COMPANY may terminate this Agreement without cause by giving CITY 90 days prior written notice.
- D. COMPANY hereby agrees that all provisions contained in the aforementioned proposal documents are hereby considered provisions of this Agreement. Any of the expressed intentions of CITY, with respect to the proposal or requirements of any company pursuant to the aforementioned proposal documents, are hereby considered rights, responsibilities, and obligations of the parties herein incorporated as provisions to this Agreement, the non-compliance with which by COMPANY shall constitute grounds for termination of this Agreement by CITY.

11. **DISPUTES REGARDING PERFORMANCE OF THE AGREEMENT.**

- A. CITY shall have the sole right to interpret this Agreement and the intent of its provisions.
- B. Any disputes (other than an occurrence giving rise to a default under this Agreement) concerning a question of fact arising under this Agreement, which is not disposed of by this Agreement, shall be decided by the West Valley City Chief of Police or his designated representative, which decision shall be reduced to writing. The CITY shall then furnish a copy of the decision to COMPANY. The decision of the Chief of Police shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, COMPANY mails or otherwise furnishes to CITY a written appeal. Said appeal shall be directed to the City Manager, whose determination shall be final and conclusive. These provisions involving disputes shall not be pled in any suit involving a question of fact arising under this Agreement, except in cases where fraud by such official is indicated. Any such decision shall be final and conclusive, unless the same is fraudulent, capricious, arbitrary, so grossly erroneous as necessary to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding, COMPANY shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. Pending final decision of a dispute hereunder, COMPANY shall proceed diligently with the performance of its services and duties under this Agreement.
- C. In the event COMPANY breaches any term or condition of this Agreement, COMPANY agrees to reimburse CITY for any and all costs, expenses, or damages sustained by CITY as the result of such breach and agrees to pay CITY's expenses in enforcing this Agreement, including reasonable attorney's fees and costs (whether incurred by in-house or independent counsel), either with or without litigation, on appeal or otherwise, administrative expenses, and court costs arising out of or by reason of COMPANY's performance or failure of performance hereunder.

COMPANY agrees that should COMPANY not respond to CITY's request for service as envisioned by the Agreement, in a timely or acceptable manner as determined by CITY, CITY may obtain the services of another entity and bill COMPANY the amount expended by the CITY for those service

12. **INSURANCE.** COMPANY shall be required to maintain, in effect throughout the term of this Agreement, general liability insurance coverage insuring and protecting the City, in a form acceptable to the City, from liability, harm, or injury which may arise as a result of the action or inactions of COMPANY'S agents. The amounts of such insurance shall not be less than the following:

- A. Required Coverage:
 - 1. Aggregate per occurrence: \$2,000,000;

2. Injury or death of one person: \$500,000;
 3. Property damage: \$100,000;
 4. Garage Keepers Liability: If providing storage the minimum amount shall be \$500,000. A minimum "On Hook" coverage amount of liability per occurrence shall be \$100,000.
- B. Deductible and Self-Insured Retention: Any deductibles or self-insured retention shall be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the CITY, its officials, employees, and volunteers, or COMPANY shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- C. Other Insurance Provisions:
1. All policies shall include the CITY, its employees, officers, officials, agents, volunteers, and assigns as additional insureds. All certificates of insurance shall be issued by the insurer and shall reference this Agreement by name and number.
 2. COMPANY's coverage shall be primary insurance as respects the CITY, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the CITY, its employees, officers, officials, agents, volunteers, and assigns shall be (1) excess of COMPANY's insurance; and (2) shall not be called upon to contribute to a loss with the insurance to be provided by COMPANY.
 3. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the CITY, its employees, officers, officials, agents, volunteers, and assigns.
 4. Coverage shall state that COMPANY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. Underwriters shall have no right of recovery or subrogation against the CITY, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

6. The insurance companies issuing the policy or policies shall have no recourse against the CITY for payment of any premiums due or for any assessments under any form of any policy.
 7. All coverage shall be written on a per occurrence basis.
- D. Acceptability of Insurers: Insurance is to be placed with insurers with an AM Best rating or no less than an A-Carrier, with a VII or higher.
- E. Verification of Coverage: COMPANY shall furnish the CITY with a copy of the insurance policy and original endorsements affecting coverage required by this Agreement. The policy and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, COMPANY shall be prepared to provide such copies prior to the execution of this Agreement.
- F. Continuity of Coverage: Each insurance policy required by this Agreement shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, sent to:

West Valley City Attorney's Office
3600 Constitution Boulevard
West Valley City, Utah 84119

If any of the required policies are, or at any time become, unsatisfactory to the CITY as to form or substance, or if a company issuing any such policy is, or at any time becomes unsatisfactory to the CITY, COMPANY shall promptly obtain a new policy, submit the same to the CITY for approval, and thereafter submit verification of coverage as required by the CITY. Upon failure to furnish, deliver, and maintain such insurance as provided herein, CITY may declare COMPANY to be in default and pursue any and all remedies the CITY may have at law or in equity, including immediately suspending, discontinuing, or terminating this Agreement.

Additionally, COMPANY's insurer shall furnish CITY with a notice of any non-payment of insurance premium by the COMPANY within ten (10) days of non-payment.

13. **NOTICES.** All notices required to be given under this Agreement shall be deemed given when mailed by first class mail and addressed to the proper party to the address set forth in the first page of this Agreement.
14. **AMENDMENTS TO AGREEMENT.** This Agreement may be amended only by written agreement of the parties hereto.

15. **AGREEMENTS NON-ASSIGNABLE, NON-TRANSFERRABLE.** COMPANY shall not assign or transfer any interest in this Agreement without the written consent of CITY thereto.
16. **AGREEMENT BINDING.** COMPANY covenants that the provisions of this Agreement shall be binding upon COMPANY's heirs, successors, representatives, and agents.
17. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such validity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision has not been contained herein, unless the exclusion of such provision prevents this Agreement from being carried out substantially in accordance with the overall intent.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have hereto set their hands the day and year first above written.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

COMPANY

By: _____

Title: _____

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

On this _____ day of _____, 2010, personally appeared before me _____, who being by me duly sworn, did say that he/she is the _____ of _____, a Utah corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC